

MICHAEL T. WILLIAMS,	)	
	)	
Petitioner,	)	<b>Case No. 3:04-cv-00225-ECR-VPC</b>
	)	
vs	)	
	)	
CRAIG FARWELL, et al.,	)	<u>ORDER</u>
	)	
Respondents.	)	
	)	

### A. Background

<sup>1</sup>All references to Exhibits in this order refer to the Exhibits attached to Respondents' Motion to Dismiss (Docket #14) and the supplemental Exhibits attached to Respondents' Answer (Docket ##23, 24) unless otherwise noted.

1 parole on Counts I-III, to run concurrently, to life with possibility of parole on Count IV, to run  
 2 consecutively to Counts I-III, and to 96-240 months on Count V, to run concurrently to Count  
 3 IV. (Exhibit 55).

4           Petitioner filed a direct appeal, and the Nevada Supreme Court affirmed his  
 5 conviction on February 13, 2002. (Exhibits 63, 65). Petitioner thereafter filed a state post-  
 6 conviction habeas petition, which the District Court denied on April 11, 2003. (Exhibit 73).  
 7 Petitioner appealed the denial of his state habeas petition, and the Nevada Supreme Court  
 8 affirmed the denial on February 19, 2004. (Exhibit 80). Petitioner then filed the current  
 9 federal habeas petition. On September 1, 2005 this court found Ground 2 of Petitioner's  
 10 petition to be procedurally defaulted and dismissed that Ground. (See Docket #18). Grounds  
 11 1, 3, and 4 still remain for this court's consideration. Petitioner's federal habeas grounds have  
 12 been fully briefed, and this court finds it is unnecessary to hold an evidentiary hearing in this  
 13 matter.

#### 14 **B. Analysis**

15           All three of Petitioner's remaining Grounds for relief allege violations of his Sixth  
 16 Amendment right to effective assistance of counsel. The Nevada Supreme Court denied  
 17 Petitioner's claims of ineffective assistance using the standard announced in *Strickland v.*  
 18 *Washington*, 466 U.S. 668 (1994). Under the Antiterrorism and Effective Death Penalty Act  
 19 ("AEDPA"), at 28 U.S.C. § 2254(d),

20           An application for a writ of habeas corpus on behalf of a person in custody  
 21 pursuant to the judgment of a State court shall not be granted with respect to any  
 22 claim that was adjudicated on the merits in State court proceedings unless the  
 adjudication of the claim –

23           (1) resulted in a decision that was contrary to, or involved an unreasonable  
 application of, clearly established Federal law, as determined by the Supreme  
 Court of the United States; or

24           (2) resulted in a decision that was based on an unreasonable  
 25 determination of the facts in light of the evidence presented in the State court  
 proceeding.

1           Thea AEDPA “modified a federal habeas court’s role in reviewing state prisoner  
2 applications in order to prevent federal habeas ‘retrials’ and to ensure that state-court  
3 convictions are given effect to the extent possible under law.” *Bell v. Cone*, 535 U.S. 685, 693-  
4 694 (2002). A state court decision is contrary to clearly established Supreme Court precedent,  
5 within the meaning of § 2254 “if the state court applies a rule that contradicts the governing  
6 law set forth in [the Supreme Court’s] cases” or “if the state court confronts a set of facts that  
7 are materially indistinguishable from a decision of [the Supreme Court] and nevertheless  
8 arrives at a result different from [the Supreme Court’s] precedent.” *Lockyer v. Andrade*, 538  
9 U.S. 63, 73 (2003), citing *Williams v. Taylor*, 529 U.S. 362, 405-406 (2000); *Bell v. Cone*, 535  
10 U.S. 685, 694 (2002).

11           Furthermore, a state court decision is an unreasonable application of clearly  
12 established Supreme Court precedent “if the state court identifies the correct governing legal  
13 principle from [the Supreme Court’s] decisions but unreasonably applies that principle to the  
14 facts of the prisoner’s case.” *Lockyer*, 538 U.S. at 73. The “unreasonable application” clause  
15 requires the state court decision to be more than merely incorrect or erroneous; the state  
16 court’s application of clearly established federal law must be objectively unreasonable. *Id.*

17           The state court’s factual determinations are presumed to be correct, and the  
18 petitioner has the burden of rebutting that presumption by clear and convincing evidence. *See*  
19 28 U.S.C. § 2254(e)(1).

20           This court cannot say that the Nevada courts’ denial of Petitioner’s ineffective  
21 assistance claims was contrary to, or an unreasonable application of federal law. Principles of  
22 comity and federalism counsel against substituting this court’s judgment for that of the Nevada  
23 courts. *Taylor v. Maddox*, 366 F.3d 992, 999 (9<sup>th</sup> Cir. 2004). It is not enough that this court  
24 may find the Nevada courts’ decision incorrect or erroneous, that decision must have been  
25 objectively unreasonable. *Id.*, *See also Wiggins v. Smith*, 539 U.S. 510, 511 (2003), *Lockyer*  
26

1 *v. Andrade*, 538 U.S. 63 (2003). Ineffective assistance of counsel under *Strickland* requires  
2 a showing of deficient performance of counsel resulting in prejudice, “with performance being  
3 measured against an ‘objective standard of reasonableness,’... ‘under prevailing professional  
4 norms.’” *Rompilla v. Beard*, 545 U.S. 374, 380 (2005). If the state court has already rejected  
5 an ineffective assistance claim, a federal habeas court may only grant relief if that decision was  
6 contrary to, or an unreasonable application of the *Strickland* standard. *See Yarborough v.*  
7 *Gentry*, 540 U.S. 1, 5 (2003). Review of the attorney’s performance must be highly deferential,  
8 and must adopt the attorney’s perspective at the time of the challenged conduct. *Strickland*,  
9 466 U.S. at 689. There is a strong presumption that counsel’s conduct falls within the wide  
10 range of reasonable professional assistance. *Id.* The Nevada courts’ determination that  
11 Petitioner’s counsel was not ineffective is neither contrary to, nor an unreasonable application  
12 of federal law, and his federal habeas petition will therefore be denied.

13 **1. Ground 1**

14 Ground 1 of Petitioner’s federal habeas petition alleges that his Sixth and  
15 Fourteenth Amendment due process rights and right to effective assistance of counsel were  
16 violated when trial counsel failed to investigate witnesses who could have refuted the testimony  
17 of a jailhouse informant. (See Docket #4). Petitioner has essentially claimed that a jailhouse  
18 informant who helped him with his legal filings used knowledge he gained from Petitioner’s  
19 legal documents to fabricate testimony against him. Petitioner argues that his counsel was  
20 ineffective for failing to subpoena records that would have demonstrated that the jailhouse  
21 informant had some of Petitioner’s legal papers in his possession. The Nevada Supreme Court  
22 denied this claim, finding that the jailhouse informant testified that he did in fact assist  
23 Petitioner with legal issues regarding his case, and that after Petitioner admitted to sexually  
24 assaulting the victims, he contacted the district attorney. (Exhibit 80, pg. 3). The Nevada  
25 Supreme Court pointed out that because the informant testified that he had assisted Petitioner  
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1 with his case, evidence that he had seen some of Petitioner's legal papers would not have had  
2 a reasonable probability of altering the outcome of the trial. *Id.* Additionally, the Nevada  
3 Supreme Court found that Petitioner failed to provide any specific evidence concerning the  
4 alleged documents that would have been found in the informant's cell. *Id.*

5           This court has reviewed the records and cannot say that the Nevada Supreme  
6 Court's denial of Petitioner's claim was contrary to or an unreasonable application of well  
7 established federal law. The Nevada Supreme Court correctly applied the *Strickland* standard,  
8 and Ground 1 will therefore be denied.

9           **2. Ground 3**

10           In Ground 3 of Petitioner's petition, he alleges that he was denied his right to  
11 effective assistance of counsel when trial counsel failed to object to the testimony of  
12 Kayshaundra Lighton. The Nevada Supreme Court denied this ground on the basis that  
13 Petitioner failed to specify what portions of the testimony were objectionable, and failed to  
14 articulate any grounds for an objection. (Exhibit 80, pg. 3). This court has reviewed the record  
15 and cannot say that the Nevada Supreme Court's determination was unreasonable, or even  
16 incorrect. In his federal habeas petition, Petitioner offers no explanation as to why counsel  
17 should have objected to the testimony other than to say that the objection would have  
18 preserved an important issue for appeal. Petitioner fails to explain what that important issue  
19 is. The Nevada Supreme Court's denial of Ground 3 was neither contrary to, nor an  
20 unreasonable application of federal law and will therefore be denied.

21           **3. Ground 4**

22           In Ground 4 of his petition, Petitioner alleges that he was denied his  
23 constitutional right to effective assistance of appellate counsel when appellate counsel failed  
24 to raise the issues related to trial counsel's failure to object to the testimony of Kayshaundra  
25 Lighton. Although the Nevada Supreme Court did not address this issue directly, it goes  
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1 without saying that if trial counsel was not ineffective for failing to object to the testimony at  
2 issue, then appellate counsel could not be ineffective for failing to raise the issue of trial  
3 counsel's ineffectiveness.

4 In his federal petition, Petitioner argues that the witness' testimony at trial was  
5 different than her testimony at the preliminary hearing, and the failure to object or impeach  
6 her on the differences should have been raised on appeal. The Nevada Supreme Court did  
7 address these allegations regarding Petitioner's claim that his trial counsel was ineffective for  
8 failing to impeach Lighton. (Exhibit 80, pg. 3-4). The Court found that Petitioner failed to  
9 specify what portion of the testimony was different from the preliminary hearing testimony.  
10 *Id.* Because the Nevada Supreme Court found that Petitioner's trial counsel was not ineffective  
11 for failing to impeach the testimony of Kayshaundra Lighton, it follows that appellate counsel  
12 could not be ineffective for failing to raise the impeachment issue on appeal. The Nevada  
13 Supreme Court's denial of Petitioner's ineffective assistance claims was not contrary to or an  
14 unreasonable application of federal law and will therefore be denied.

15 **IT IS THEREFORE ORDERED** that the Petitioner's Petition for a Writ of  
16 Habeas Corpus (Docket #4) is **DENIED**. The Clerk shall enter Judgment accordingly.

17 Dated this 28<sup>th</sup> day of September, 2007.

18   
19 UNITED STATES DISTRICT JUDGE  
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